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McDermott Will & Emery LLP 600 13th Street, NW Washington, DC 20005-3096			EXAMINER STRODER, CARRIE A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/054,106	Applicant(s) CENTER ET AL.	
	Examiner CARRIE A. STRODER	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 10-20 and 23-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10-20 and 23-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This is in response to the applicant's communication filed on 01 August 2011, wherein:

Claims 1-3, 10-20, and 23-39 are currently pending;
claims 4-9 and 21-22 are cancelled; and
claim 1 is amended.

Claim Objections

1. Claim 26 is objected to because of the following informalities: "wherein the contact information in the database includes information about the reason for each prior contacts, such as to purchase a vehicle, service a vehicle, or purchase a part" should read "wherein the contact information in the database includes information about the reason for each prior contact, such as to purchase a vehicle, service a vehicle, or purchase a part". Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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2. **Claims 26 and 38 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 26 recites

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the broad recitation "information about the reason for each prior contact", and the claim also recites "such as to purchase a vehicle, service a vehicle, or purchase a part" which is the narrower statement of the range/limitation. See MPEP 706.03(d). Claim 38 recites very similar limitations.

3. Regarding claims 26 and 38, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3, 10-19, and 23-37 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Based upon consideration of all of the relevant factors with respect to the claims as a whole, claims 1-3, 10-19, and 23-27 are held to claim an abstract idea, and are therefore rejected as ineligible subject matter under 35

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U.S.C. 101. The rationale for this finding is explained below:

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to an examiner is that one clue to patent eligibility under 35 USC 101 is whether or not the process is (1) be tied to a particular machine or apparatus or (2) transforms underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

The claim should recite the particular machine or apparatus to which it is tied, for example by identifying the machine or apparatus that accomplishes the method steps, or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally

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insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

Here, applicant's method steps fail the first prong of the new test because although a computer system is mentioned, it is stated that the steps are performed *using* the system, which could mean that a human being is directing the computer to perform each step, not that the computer is performing each step.

Further, applicant's method steps fail the second prong of the test because the claimed steps do not result in an article being transformed from one state to another. There is no transformation occurring in the claims for a physical object or substance or data that represents physical objects or substances.

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Additionally, other factors and considerations in addition to the machine/transformation test also point to a finding that the claims are directed to a mere abstract idea. The claims also seem to be a mere statement of a general concept of referring a customer to a merchant. The claims if allowed would appear to effectively grant a monopoly on the concept of referring a customer to a merchant as claimed. The claims seem to be directed to a general business concept of referring a customer to a merchant, which seems to be just a general business concept. When viewing these factors and the claims as whole, it is concluded that the claims are directed to a mere abstract idea and are not patent eligible under 35 USC 101.

The dependent claims, when analyzed as a whole are held to be patent ineligible under 35 U.S.C. 101 because the additional recited limitations fail to establish that the claims are not directed to an abstract idea, for the same reasoning as set forth with respect to the independent claims. The dependent claims do not act to remedy the problem with the independent claims by reciting (explicitly

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or implied) the use of any particular machine and/or any significant transformation.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1-3, 10-20, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burge (US**

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**6014638), in view of Applicant Admitted Prior Art (AAPA),
and further in view of Official Notice.**

Referring to claims 1 & 20:

Burge discloses

using the computer system, prompting the prospective customer to enter customer information about the prospective customer, including information about the identify and location of the customer (col. 4, lines 18-29 and col. 5, lines 51-67 where the user enters their user identifier to access the service and the user's profile includes their address);

using the computer system, receiving customer information about the prospective customer, including information about the identify and location of the customer (col. 4, lines 18-29 and col. 5, lines 51-67 where the user enters their user identifier to access the service and the user's profile includes their address);

using the computer system, locating a first dealer that had a prior contact with the prospective customer by searching

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a database of contact information, the database of contact information including historical data about prior contacts between a plurality of prospective customers, including the identity of each prospective customer, and a plurality of dealers, including information about (col. 5, lines 51-60 and col. 3, lines 45-49 *Raw data relating to the electronic shopping options, such as specific sites and specific products selected by the shopper, entry and exit times for the sites, number of visits to the sites, etc., are recorded and processed to create a shopping profile for the shopper. Raw data may then be processed to create a preference profile for the shopper* and where the instant invention takes historical information into account for the shopper's preferences):

prior contacts which the prospective customers had with each dealer, including the reason for each prior contact (col. 5, lines 51-60 *...such as specific sites and specific products selected by the shopper... where the sites are interpreted as dealers and the products selected are the reasons for the contact*);

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using the computer system, locating the reason for the prior contact between the prospective customer and the first dealer by searching the database of contact information (col. 5, lines 51-59 *Raw data relating to the electronic shopping options, such as specific sites and specific products selected by the shopper, entry and exit times for the sites, number of visits to the sites, etc., are recorded and processed to create a shopping profile for the shopper. Raw data may then be processed to create a preference profile for the shopper* and where the specific products selected by the customer are the reason for the contact, which is located when using the raw data to create a preference profile);

using the computer system, locating a second dealer that had a prior contact with the prospective customer by searching the database of contact information (col. 5, lines 51-60 where the plural term *specific sites* indicates identifying (or locating) more than one merchant/dealer);

using the computer system, locating the reason for the prior contact between the prospective customer and the second dealer by searching the database of contact

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information (col. 5, lines 51-59 *Raw data relating to the electronic shopping options, such as specific sites and specific products selected by the shopper, entry and exit times for the sites, number of visits to the sites, etc., are recorded and processed to create a shopping profile for the shopper. Raw data may then be processed to create a preference profile for the shopper and where the specific products selected by the customer are the reason for the contact, which is located when using the raw data to create a preference profile*);

using the computer system, determining that one of the located dealers should be given preference over the other located dealer in a communication to the prospective customer which refers the prospective customer to at least one of the located dealers based on the located reasons the person had prior contacts with the located dealers, the computer system being programmed to give preference to a prior contact for the reason of purchasing a first service/product as compared to the reason of purchasing a second service/product, the determining resulting in the second dealer being given preference over the first dealer because of the programmed preference (col. 5, line 51 thru

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col. 6, line 25 *During the display customization phase, displays with content regarding (1) general merchant information or options and/or (2) specific merchant product and service information or options are customized to conform to the shopper's preferences as indicated in the shopper's profile*); and

using the computer system, communicating information to the prospective customer which refers the prospective customer to at least the second dealer, the information being organized or otherwise presented in a manner that gives preference to the second dealer over the first dealer, notwithstanding that the second dealer is further from the prospective customer than the first dealer (col. 5, line 51 thru col. 6, line 25 *...displays...are customized to conform to the shopper's preferences...* and where the prior art uses predictive models for customizing the customer's information).

Burge discloses a system for customizing a customer's shopping experience. Burge does not disclose wherein the merchant is a dealer of automobiles and/or automobile services; the identity and location of each of the dealers;

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and the located second dealer being located further from the prospective customer than the first dealer.

However, AAPA teaches a similar system for customizing a customer's shopping experience. AAPA teaches

dealers of automobiles and/or automobile services ([0008] *Manufacturers often refer prospective customers to the automobile dealer that is closest...)*;

the identity and location of each of the dealers ([0008] *...it is commonly known to search for business and conveniently locate the closest one to a particular location through the Internet...Some locators provide customers with a choice of two or more of the closest dealers)*; and

the located second dealer being located further from the prospective customer than the first dealer ([0008] *Some locators provide customers with a choice of two or more of the closest dealers and where, if there is a choice of dealers, one dealer would be located further from the customer).*

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The applicant admits on the record that the limitations identified as AAPA were known to one of ordinary skill in the art. It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the system disclosed in Burge to incorporate wherein the merchant is a dealer of automobiles and/or automobile services; the identity and location of each of the dealers; and the located second dealer being located further from the prospective customer than the first dealer as taught by AAPA because this would provide a manner for finding specific types of merchants, thus aiding the client by providing them with easy access to the specific information in which they are most interested.

Burge and AAPA disclose a system for customizing a customer's shopping experience. However, Burge and AAPA do not specifically disclose the reasons for shopping with the merchant, namely the products and services bought by the customer, being a vehicle purchase and vehicle service.

However, Examiner takes Official Notice that vehicle purchasing and vehicle servicing were well known at the

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time of invention to persons of ordinary skill in the art. For example, many persons have purchased or had serviced their cars at the dealer, as these are a dealer's main sources of revenue.

Therefore, it would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Burge and AAPA by recording the reasons for customer contact as purchasing or servicing a vehicle as taught by Official Notice because this provides a specific product or service that may be used in Burge in order to track the customer's preferences and refer the customer to the most appropriate merchant. The PHOSITA would have found it obvious that Burge discloses a system and method for customizing a service to a customer regardless of the business and, as such, it would have been obvious to substitute automobile services and purchasing since automobile services and purchasing is nothing more than a label being assigned to the type of business and does not affect or alter the steps of the claimed invention. Therefore, it would have been obvious to substitute Burge's general business with a specific business, such as automobile services or purchasing.

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Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Referring to claim 2:

Burge discloses collecting information about a user (col. 4, lines 20-23 *...a user identifier (ID)...*).

Burge and AAPA disclose a system for customizing a customer's shopping experience. However, Burge and AAPA do not disclose wherein the information about the identity of the prospective customer includes at least a portion of the prospective customer's name.

However, Examiner takes Official Notice that using at least a portion of a person's name as part of their user identifier (ID) was well known at the time of invention to persons of ordinary skill in the art. For example, when Examiner attended graduate school, Examiner was assigned a user identifier of *cstrodl*, which is based on the first letter of Examiner's name and the first five letters of Examiner's last name. Many workplaces who provide their

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employees with user ID's follow a similar procedure, although they may use the entirety of the employee's name.

Therefore, it would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Burge and AAPA by using at least a portion of a person's name as information about their identity as taught by Official Notice because this provides a way to provide a unique, easy to remember user ID for customers.

Referring to claim 3:

Burge discloses wherein the information about the location of the prospective customer includes at least one from the group consisting of the prospective customer's address, zip code, city, or state (col. 5, lines 60-63 where the customer's address is provided).

Referring to claim 10:

Burge discloses

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repeating the first three steps in connection with a different prospective customer (col. 5, lines 60-63 ...*computer system facilitates communication between shoppers and merchants* where the system is designed for use by multiple customers); and

the computer system failing to locate in the database any prior contact between the different prospective customer and a dealer of automobiles and/or automobile services (col. 5, line 51 thru col. 6, line 25 where data is collected based on customer's history and a customer may not have interacted with all merchants).

AAPA teaches

using the computer system, locating in the database one or more dealers of automobiles and/or automobile services that are near the different prospective customer ([0008] where the "locator" function returns the addresses of dealers near the customer); and

delivering information to the different prospective customer about at least one of the located dealers that are

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near the different prospective customer ([0008] where the "locator" function is on the internet and available for use by multiple customers).

Referring to claim 11:

Burge discloses wherein the communicated information is divided into a plurality of sets (col. 6, lines 2-25 *The items that appear on the display (as represented by icons or buttons) may relate to a general topic, category, or area of interest (e.g., casual clothiers, camping equipment.)* where the sets are whether the items are related to a general topic, category, or area of interest).

Referring to claim 12:

Burge discloses wherein each set lists dealers that had a prior contact with the customer for the same reason (col. 6, lines 2-25 *...similarities to products recently purchased...* where the reason for contact is the products purchased).

Referring to claim 13:

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Burge discloses wherein the communicated information is configured such that only one of the sets is viewable at a time (col. 6, lines 2-25 *The items that appear on the display (as represented by icons or buttons) may relate to a general topic, category, or area of interest (e.g., casual clothiers, camping equipment.)* where the "or" indicates that only one set is viewed at a time).

Referring to claim 14:

Burge discloses wherein the communicated information is configured such that one of the sets has a link leading to another of the sets (col. 7, lines 1-18 *Shopping options 24 are presented to the user 10 who responds by making additional selections 12 that are then analyzed to create user data 16 that is recorded in the User Profile Database 18. The newly acquired user data is then analyzed by the Browse/Purchase process 14, along with the products and services data 20, to create subsequent shopping options and related displays 24 for the user 10 where the sets are linked together by being on the same website and by the user clicking thru the various options).*

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Referring to claim 15:

Burge discloses wherein the communicated information is configured such that the sets are displayed in order of the preference (col. 8, line 61 thru col. 9, line 25 *...predicts what the shopper would like to see in the next display based on the model parameters and general display variables...*).

Referring to claim 16:

AAPA teaches wherein each dealer listed in each set has a link for displaying a map of its location ([0008] where the map is linked to the location).

Referring to claim 17:

AAPA teaches wherein each dealer listed in each set has a link for displaying directions to its location ([0008] *driving directions*).

Referring to claim 18:

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Burge discloses wherein the searching the database locates a prior contact between the prospective customer and a third dealer for the reason of purchasing a product on a different date than the contact with the second dealer and wherein the communicating information gives preference to the prior contact with the most recent date (col. 5, line 51 thru col. 6, line 25 *A predictive model is applied to the profile data to select display characteristics and elements--such as the nature of items selected for the shopper, similarities to products recently purchased...*).

AAPA teaches where the dealer is a dealer of automobiles and/or automobile services ([0008] *Manufacturers often refer prospective customers to the automobile dealer that is closest...*).

Official Notice teaches where the reason is purchasing a vehicle.

Referring to claim 19:

Burge discloses wherein the giving preference includes highlighting the prior contact with the most recent date

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(col. 5, line 51 thru col. 6, line 25 *A predictive model is applied to the profile data to select display characteristics and elements--such as the nature of items selected for the shopper, similarities to products recently purchased...* where displaying information related to the merchant/dealer with the most recent purchasing history is highlighting that merchant/dealer).

Referring to claim 26:

Burge discloses wherein the contact information in the database includes information about the reason for each prior contacts (col. 5, lines 51-60 *...such as specific sites and specific products selected by the shopper...* where the sites are interpreted as dealers and the products selected are the reasons for the contact).

Burge and AAPA disclose a system for customizing a customer's shopping experience. However, Burge and AAPA do not specifically disclose the reasons for shopping with the merchant, namely the products and services bought by the customer, being a vehicle purchase, a part purchase and vehicle service.

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However, Examiner takes Official Notice that vehicle purchasing, part purchasing, and vehicle servicing were well known at the time of invention to persons of ordinary skill in the art. For example, many persons have purchased parts or vehicles or had serviced their cars at the dealer, as these are a dealer's main sources of revenue.

Therefore, it would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Burge and AAPA by recording the reasons for customer contact as purchasing a vehicle, or parts for a vehicle, or servicing a vehicle as taught by Official Notice because this provides a specific product or service that may be used in Burge in order to track the customer's preferences and refer the customer to the most appropriate merchant.

Referring to claim 27:

Burge discloses wherein the querying using customer information from the first customer results in contacts with different dealers for different reasons and wherein

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the delivering information to the first customer gives preference to one of the reasons (col. 5, line 51 thru col. 6, line 25 *During the display customization phase, displays with content regarding (1) general merchant information or options and/or (2) specific merchant product and service information or options are customized to conform to the shopper's preferences as indicated in the shopper's profile*).

4. Claims 23-25, 28-37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burge (US 6014638), in view of Applicant Admitted Prior Art (AAPA).

Referring to claim 23:

Burge discloses

using the computer system, prompting the prospective customer to enter customer information about the first prospective customer (col. 4, lines 18-29 and col. 5, lines 51-67 where the user enters their user identifier to access the service);

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using the computer system, receiving customer information about the first prospective customer (col. 4, lines 18-29 and col. 5, lines 51-67 where the user enters their user identifier to access the service);

using the computer system, querying a database using the customer information from the first customer that contains (col. 5, lines 51-60 *Raw data relating to the electronic shopping options, such as specific sites and specific products selected by the shopper, entry and exit times for the sites, number of visits to the sites, etc., are recorded and processed to create a shopping profile for the shopper. Raw data may then be processed to create a preference profile for the shopper*):

contact information about prior contacts between the one or more of the dealers and one or more prospective customers, the query generating at least one prior contact between the first prospective customer and at least one of the dealers in the database (col. 5, lines 51-60 *...such as specific sites and specific products selected by the shopper... where the sites are interpreted as dealers and the products selected are the reasons for the contact*);

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using the computer system, reporting information about at least one of the dealers that had a prior contact with the first prospective customer to the first prospective customer (col. 5, line 51 thru col. 6, line 25

...displays...are customized to conform to the shopper's preferences... and ...similarities to products recently purchased... and ...items may be merchant specific...);

using the computer system, prompting a second prospective customer to enter customer information about the second prospective customer (col. 4, lines 18-29 and col. 5, lines 51-67 where the user enters their user identifier to access the service and where multiple customers may use the system);

using the computer system, receiving customer information about the first second customer (col. 4, lines 18-29 and col. 5, lines 51-67 where the user enters their user identifier to access the service);

using the computer system, querying the database using the customer information from the second customer, the query

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failing to generate any prior contact between the second prospective customer and any of the dealers in the database (col. 5, line 51 thru col. 6, line 25 where data is collected based on customer's history and a customer may not have interacted with all merchants).

Burge discloses a system for customizing a customer's shopping experience. Burge does not disclose dealer information about the identity and location of a plurality of dealers; using the computer system, locating one or more dealers that are near the location of the second prospective customer; and using the computer system, delivering information about at least one of the dealers that are near the second prospective customer to the second prospective customer.

However, AAPA teaches a similar system for customizing a customer's shopping experience. AAPA teaches

dealer information about the identity and location of a plurality of dealers ([0008] *...it is commonly known to search for business and conveniently locate the closest one to a particular location through the Internet...Some locators*

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provide customers with a choice of two or more of the closest dealers);

using the computer system, locating one or more dealers that are near the location of the second prospective customer ([0008] where the "locator" function returns the addresses of dealers near the customer); and

using the computer system, delivering information about at least one of the dealers that are near the second prospective customer to the second prospective customer ([0008] where the "locator" function is on the internet and available for use by multiple customers).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the system disclosed in Burge to incorporate dealer information about the identity and location of a plurality of dealers; using the computer system, locating one or more dealers that are near the location of the second prospective customer; and using the computer system, delivering information about at least one of the dealers that are near the second prospective customer to the second

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prospective customer as taught by AAPA because this would provide a manner for finding specific types of merchants, thus aiding the client by providing them with easy access to the specific information in which they are most interested.

Referring to claim 24:

Burge discloses wherein the customer information about the first or the second prospective customer comprises the prospective customer's address and zip code (col. 5, lines 60-63 where the customer's address is provided and where the term "address" is commonly used to include a person's entire address, including street address, city, state, and zip code).

Referring to claim 25:

Burge discloses wherein the customer information about the first or the second prospective customer includes at least one from the group consisting of the prospective customer's name, address, zip code, city or state (col. 5, lines 60-63 where the customer's address is provided).

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Referring to claim 28:

Burge discloses wherein a list of the dealers nearest to the second customer is returned ([0008] where the "locator" returns the closest dealers to the customer).

Referring to claims 29-35:

Claims 29-35 are rejected on the same basis as claims 11-17, respectively.

Referring to claim 36:

Burge discloses wherein each set lists dealers with the most recent prior contacts first (col. 5, line 51 thru col. 6, line 25 *A predictive model is applied to the profile data to select display characteristics and elements--such as the nature of items selected for the shopper, similarities to products recently purchased...*).

Referring to claim 37:

Burge discloses wherein each set highlights the dealer with the most recent prior contact (col. 5, line 51 thru col. 6,

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line 25 *A predictive model is applied to the profile data to select display characteristics and elements--such as the nature of items selected for the shopper, similarities to products recently purchased... where displaying information related to the merchant/dealer with the most recent purchasing history is highlighting that merchant/dealer).*

Referring to claim 39:

Burge discloses

a database system configured to identify at least one seller with whom the prospective customer had at least one prior contact (col. 5, lines 51-67 *...data regarding the shopper's preferences are collected*); and

a reporting system configured to provide information to the prospective customer about at least one of the identified sellers, giving preference to the seller with whom the customer had a prior contact, if such a seller is identified by the database system (col. 5, line 51 thru col. 6, line 25 *During the display customization phase, displays with content regarding (1) general merchant information or options and/or (2) specific merchant product*

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and service information or options are customized to conform to the shopper's preferences as indicated in the shopper's profile).

Burge discloses a system for customizing a customer's shopping experience. Burge does not disclose where the database system identifies at least one seller near to the prospective customer.

However, AAPA teaches a similar system for customizing a customer's shopping experience. AAPA teaches where database system identifies at least one seller near to the prospective customer ([0008] where the "locator" function returns the addresses of dealers near the customer).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the system disclosed in Burge to incorporate where database system identifies at least one seller near to the prospective customer as taught by AAPA because this would provide a manner for finding specific types of merchants, thus aiding the client by providing them with easy access to the specific information in which they are most interested.

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5. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burge (US 6014638), in view Official Notice.

Referring to claim 38:

Burge discloses

a database system configured to look into a database to locate information about prior contacts the prospective customer has had with the sellers (col. 5, lines 51-67 *...data regarding the shopper's preferences are collected*); and

a reporting system configured to provide information to the prospective customer about at least one of the sellers with whom the customer had a prior contact, giving preference to the seller with whom the prospective customer had a prior contact for one of several reasons, when the customer had prior contacts for different reasons with two or more of the sellers (col. 5, line 51 thru col. 6, line 25 *During the display customization phase, displays with content*

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regarding (1) general merchant information or options and/or (2) specific merchant product and service information or options are customized to conform to the shopper's preferences as indicated in the shopper's profile).

Burge discloses a system for customizing a customer's shopping experience. However, Burge does not specifically disclose the reasons for contact being a vehicle purchase, a part purchase and vehicle service.

However, Examiner takes Official Notice that vehicle purchasing, part purchasing, and vehicle servicing were well known at the time of invention to persons of ordinary skill in the art. For example, many persons have purchased parts or vehicles or had serviced their cars at the dealer, as these are a dealer's main sources of revenue.

Therefore, it would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Burge by recording the reasons for customer contact as purchasing a vehicle, or parts for a vehicle, or servicing a vehicle as taught by

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Official Notice because this provides a specific product or service that may be used in Burge in order to track the customer's preferences and refer the customer to the most appropriate merchant. The PHOSITA would have found it obvious that Burge discloses a system and method for customizing a service to a customer regardless of the business and, as such, it would have been obvious to substitute automobile services and purchasing of automobiles or parts for an automobile since automobile services and purchasing of automobiles and parts is nothing more than a label being assigned to the type of business and does not affect or alter the steps of the claimed invention. Therefore, it would have been obvious to substitute Burge's general business with a specific business, such as automobile services or purchasing. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant made arguments based on the previous

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rejection, which used different art from the instant rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARRIE A. STRODER whose telephone number is (571)270-7119. The examiner can normally be reached on Monday - Thursday 8:00 a.m. - 5:00 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Mooneyham can be reached on (571)272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CARRIE A. STRODER/
Examiner, Art Unit 3689

/Gerardo Araque Jr./
Primary Examiner, Art Unit 3689